

Chapter 62 - Telecommunications Ordinance

- (2) Telecommunication services to the City shall be charged at a rate no higher than that charged to any other governmental, public or private subscriber.

ORDINANCE NO. 94-644

**"AN ORDINANCE TO AMEND ORDINANCE NO. 94-609 ENTITLED,
'AN ORDINANCE REGULATING THE GRANTING OF FRANCHISES
FOR TELECOMMUNICATIONS SYSTEMS.'"**

THE CITY OF DEARBORN ORDAINS:

I

GENERAL PROVISIONS

Section 1.1 This Ordinance shall be known and may be cited as the Dearborn Telecommunications Systems Regulatory Ordinance.

Section 1.2 Unless otherwise stated, the following definitions of terms shall apply throughout this Ordinance:

- a) **City** shall mean the City of Dearborn.
- b) **Council** shall mean the City Council of the City of Dearborn.
- c) **Customer** is any person who contracts with a Grantor for, or is in any manner provided with Telecommunications System Service.
- d) **Franchising** is a non-exclusive, limited authorization awarded by ordinance for the construction, maintenance and operation of a telecommunications system on, under, over or across the public ways of the City and/or to transact local telecommunications business therein.
- e) **Grantor** is any holder of a Telecommunications System Franchise granted pursuant to this ordinance.
- f) **Person** shall mean any individual, corporation, partnership or any other entity.
- g) **Service** means the provision or offering of telecommunications service (either directly or as a carrier for others) to persons within the City by means of the Telecommunications System. Specifically excluded are telecommunications services subject to regulation under the Cable Act of 1964, 47 U.S.C. § 521, et seq. as amended ("Cable Act"). Any of service to residential customers shall be subject to Council approval, which shall not be unreasonably withheld or delayed.
- h) **Telecommunications System** means the telecommunications network to be constructed and installed by grantee and used to provide Service pursuant to and in accordance with a Franchise,

including all network facilities such as cables, conduits, access manholes, rights-of-way, equipment, devices and appurtenances to be used by Grantee to make the telecommunications network fully operational. Specifically excluded are telecommunications systems subject to regulation under the Cable Act.

Section 1.3 It shall be unlawful for any Person to own, service, use, transmit over or operate a Telecommunications System within the City unless authorized by a valid grant of Franchise.

Section 1.4 The City may grant one or more Franchises for Telecommunications Systems in the City subject to this Ordinance. The City specifically reserves the right to grant, at any time, such additional Franchises for a Telecommunications System as it deems appropriate. Additional Franchises shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Grantee.

Section 1.5 No grant of Franchise shall be valid unless authorized by ordinance adopted by the Council and until a Franchise agreement has been executed by the Mayor and filed with the City Clerk. The Mayor is authorized to execute agreements to extend a Franchise for a period of one year or less.

Section 1.6 All Persons owning or operating a Telecommunications System within the City shall designate a local representative, operate a local business office within the greater Detroit Metropolitan Area, and shall have a publicly-listed telephone.

Section 1.7 The owner(s) or operator(s) of all franchised Telecommunications Systems operating in the City shall file with the City Engineer and the Department of Communications annually during a construction year and every two years thereafter, a current map and subsidiary plate showing the exact location of the transmission and distribution facilities and equipment of the system in the public right-of-way.

Section 1.8 All facilities and equipment of any franchised Telecommunications System operating in the City shall be constructed and maintained at a state-of-the-art level in accordance with the applicable requirements and specifications of the National Electrical Code as adopted by the City of Dearborn, the applicable rules and regulations of the Federal Communication Commission, and all other pertinent ordinances and codes of the City.

Section 1.9 The Franchise agreement required by Section

1.5 may contain such terms and conditions, including, without limitation, compensation to the City for use of rights-of-way and provision by the provider of services and facilities to the City, as public interest may require, subject to the limitations or any applicable federal, state or local law.

Section 1.10 In recognition of the unique character of telecommunications franchises, a franchise fee shall be determined through a negotiated franchise fee procedure based upon the value of services for similar agreements and other pertinent factors.

Section 1.11 Any franchise granted by the City hereunder is to be held in personal trust by the Grantee and may not be sold, transferred, assigned or assigned in any manner either directly or indirectly, without the prior written consent of the Council.

22

DEPARTMENT OF COMMUNICATIONS

Section 2.1 The Department of Communications (the "Department of Communications") shall administer all franchises on behalf of the City; shall review and make recommendations upon any proposal for any amendment of an existing franchise, any new franchise and for the renewal of any franchise.

Section 2.2 Recommendations of the Department of Communications shall be addressed to the Mayor and Council and shall be filed with the City Clerk.

Section 2.3 The Department of Communications decisions, rulings or adoptions of operational standards and franchise policies may be appealed to the Council by any party or person aggrieved thereby. The Council may uphold or reverse the ruling or decision or may remand to the Department of Communications for rehearing or reconsideration.

Section 2.4 At the request of the Department of Communications, the designated local representatives of any franchised telecommunications system shall attend and respond at any meeting called by the Department of Communications provided, however, that such representative is given reasonable notice prior to the meeting.

XIII
SANCTIONS AND PENALTIES

- Section 3.1** The Council may suspend or revoke any Franchise of any Telecommunications System for violation of any of the material provisions of this Ordinance and/or any Telecommunications Systems Franchise Ordinance upon the recommendation of the Department of Communications, provided, however, that Grantee is given written notice of the violation and a reasonable opportunity to cure the same. The time for cure shall be for such period as may be reasonably necessary to correct the violation as determined by the Department of Communications.
- Section 3.2** It shall be unlawful for the owner or operator of any Telecommunications System in the City to collect customer fees for any period of time when its Franchise has been suspended or revoked by the Council. The City may bring action on behalf of itself or Customers to recover any such fees collected.
- Section 3.3** It shall be unlawful for the owner or operator of any Telecommunications System in the City to enter upon private land or buildings without due process of law including notice and hearing or without the consent of the owner or possessor.
- Section 3.4** Violation of any provisions of this Ordinance and/or any Telecommunications Systems Franchise Ordinance shall be a misdemeanor punishable by a fine of not more than \$500 or by imprisonment for not more than 90 days or both such fine and imprisonment. Each day of a continuing violation may be charged and punished as a separate and distinct offense.

IV
OTHER

- Section 4.1** If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

01-13-97 03:11PM FROM MICH. BELL LAW DEPT. TO 913127017711

P078/089

AUTHENTICATION

**This is to certify that the undersigned do hereby
authenticate the foregoing ordinance adopted on August 1,
1995 and published on August 10, 1995, effective the day
following publication.**

MICHAEL A GUIDO, Mayor

DUANE WIDENBORG, City Clerk

Communication Rules



by
CYNTHIA KMETT

COUNCIL, from page 1

ernment." Fees levied under this law shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting a permit and maintaining the right-of-ways, easements, or public places used by a provider." While the city cannot recoup the cost of acquiring right of way, it can charge firms for what it costs for upkeep and repair.

Under the new ordinance, Troy will charge 40 cents a linear foot underground and 25 cents a foot for overhead lines, plus there is a \$3,000 fee for the provider (not users) who dig in the right-of-way.

"Will this cover Troy's costs?" council asked City Manager Frank Gerstenecker.

"No," he replied rather matter-of-factly. In fact, he said his original request, minus the initial cost of the right-of-way, was probably much closer to the costs for the city. The city should reserve the right to change costs based on a review of actual costs, Gerstenecker said.

He reminded the council that the city will be the entity held responsible if one of the providers does damage in the right-of-way to either our own utilities or the roadway, and possibly to the owners of other utilities. He pointed to the recent fiasco in Auburn Hills where a contractor dug through the water main and turned off water in two cities as an example of why the city must be very vigilant about companies digging in the city's right-of-ways.

The Chamber of Commerce Chairman of the Board Phil Goy had sent a letter with many points of contention about the proposed law, but Mayor Pro Tem Tony Pallotta had

over his concerns and the way the city wasn't going to change the ordinance.

"The ordinance itself is not intended to provide every detail," Letzmann noted. "Details will be in the franchise agreement that is entered with the providers."

Councilman Randy Husk said he realized that providers of telecommunications services wanted no rules and no fees for digging up city streets. "But it ain't going to fly in this city, because (the ordinance) is the right thing for this city to do. Other cities have regulations and rates that far exceed what we originally proposed...It doesn't make any sense to let people do whatever they want."

Husk said he was fed up with the nonsense from providers and their supporters. Originally, he pointed out they wanted to sign anything to get the right to dig in the right-of-ways. Their "only complaint was the money," Husk said. Now they're nitpicking at the entire ordinance. "I challenge them to tell us what's wrong."

EDS attorney Joan Trusty said she had no complaints with the revised ordinance. "EDS is just very pleased with the responsiveness to our concerns and those of our customers and our current owner, General Motors." She thanked council for the chance to make their concerns known to the city.

However, TCI's attorney Jim Alexander said Troy's ordinance "is not in keeping with the law of the land." He contends TCI can dig in the right-of-way under state law and the city can't stop them.

City Attorney Letzmann, however, believes differently. He called it a "proper ordinance" under state law.

Ameritech Michigan only wanted to know if it was affected in any way.

Husk said when he said, "We all recognize at this time we can't apply these rights to regulate phone service of Ameritech." He did speculate that if municipalities joined together, he suspected they could overturn Ameritech's protected status that dates back to 1904. He said one city couldn't fight them alone.

MCI Metro's attorney Jim Harlan was not having any part of this new

ordinance. After asking council not to pass it, he said, "We are here for a permit not for a franchise." He said MCI's exempt from the franchise requirement. "I'm counting down the 90 days (under state law the city has 90 days to issue a permit), and then 'we'll take the necessary remedies...You'll be arguing in state and appellate court," he said, adding that Troy was forcing MCI to go to other cities. "We will not negotiate with you at all," Harlan continued.

"When Mr. Husk says you don't have enough money to challenge big companies in court, you're right," he added very sarcastically.

This prompted Councilman Husk to say he may have to run for council again just to ensure the city that MCI never lays a foot of cable in this city without paying all the fees. He noted that "I'm not sure this will ever go to court, but if it does, believe me, we won't go there alone. We'll be joined by cities we never heard of," he told Harlan.

(After council, when Husk was asked if he really might reconsider stepping down, he smiled and said, "I'm thinking about it." He has until January 22 to decide.)

Councilman Matt Pryor opposed passing the ordinance on the grounds that "it is illegal if passed." He said it would be "a waste of money, expended resources, and lost opportunities." He suggested the city should be talking to their legislators about protecting cities and residents.

Councilman Robert Gosselin opposed it calling it "another lay of government" and more taxes people didn't get to vote on.

However, it passed 4-2, with Mayor Jeanne Stine absent.

GAZETTE NEWSPAPERS, INC.

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Finances Look Good for '96

ECONOMIC CLUB, from page 1

Miller said 1995 looks to be the year where the Federal Reserve broke the back of inflation. Commodity prices and interest rates that accelerated in 1994 began to go down in 1995. Bank loans grew to a fever pitch in 1994 but started to slow in 1995

by another one-half percent.

"By acting pre-emptively to halt the rise of inflation and interest rates, Federal Reserve may have added life to this recovery," he asserted.

Miller reminded his audience that inflation rates nearly tripled before the last recession, moving from below two

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE P. ZATKOFF

TCG DETROIT, a New York
general partnership,
Plaintiff,

96-74338

Civil Action No. _____

v.

Hon. MAURICE H. HARRIS
U.S. DISTRICT COURT

CITY OF DEARBORN,
Defendant.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF, DAMAGES, AND OTHER RELIEF

JURISDICTION AND VENUE

1. This action arises under the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.), in particular 47 U.S.C. § 253, as more fully appears below. This Court has jurisdiction of the claims stated in Counts I, II, III, and V of this complaint pursuant to 28 U.S.C. §§ 1331, 1337(a), 1343 and 2201, as an action arising under an Act of Congress regulating commerce, and seeking declaratory relief. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the sole defendant resides in this District, because a substantial part of the events giving rise to the claim occurred in this District, and because a substantial part of the property that is the subject of this action is situated in this District.

47. TCG Detroit's major competitor for local telecommunication services is the incumbent local telecommunications company, Michigan Bell¹⁰, which because of its former monopoly status still has virtually 100% of the local telecommunications business in Dearborn.

48. Michigan Bell received its license to provide basic local exchange telecommunications service in parts of Michigan, including Dearborn, under the Michigan Telecommunications Act on August 14, 1992.¹¹

49. Dearborn has not applied its Regulatory Ordinance against Michigan Bell, TCG Detroit's major competitor, and the dominant local telecommunication's provider in Dearborn. It does not charge the dominant provider the "franchise fees" it demands of TCG Detroit. It does not demand a "franchise" or a "franchise agreement" under its Regulatory Ordinance from Michigan Bell as it demands of TCG Detroit. Nonetheless, TCG Detroit's major competitor and the dominant provider continues to operate freely in Dearborn without restriction, without local franchise regulation, and without payment of franchise fees, while TCG Detroit's efforts to compete in Dearborn are substantially restricted.

50. Dearborn's actions are contrary to and in violation of the Federal Telecommunications Act of 1996, and in particular 47 U.S.C. § 253(c).

¹⁰ Michigan Bell Telecommunications Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan," pursuant to assumed name filings with the state of Michigan.

¹¹ See Re New Licenses, MPSC Case No. U-10054, Opinion and Order issued August 14, 1992.

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**STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING**

**JOHN ENGLEN
GOVERNOR**

August 19, 1996

**The Honorable William M. Oakley
Mayor of Romulus
Administrative and Legislative Offices
11111 Wayne Road
Romulus, Michigan 48174**

Dear Mayor Oakley:

I appreciate your letter of last month urging my support for efforts to change the Federal Communications Commission's (FCC) recently proposed rules on the utilization of public rights-of-way. While I certainly support state control over intrastate telecommunications issues, I am troubled by the recent discriminatory actions taken by some municipalities in Michigan. I believe communities ought to be looking for ways to attract new telecommunications companies. Instead, some are trying to circumvent Michigan law and assess illegal franchise fees. Actions taken by the City of Troy, for example, discourage investments in Michigan communities, depriving citizens of competitively priced telecommunications services.

As you know, the Michigan Telecommunications Act (MTA) prohibits local municipalities from charging excessive fees for use of the public right-of-way. For companies providing telecommunications services, fees can only be recovered to offset the cost of maintaining and overseeing the right-of-way. Fees that tax revenues from telecommunications services beyond these costs are prohibited. Some municipalities have chosen to disregard this prohibition and could face possible enforcement penalties as outlined in the MTA.

While the courts may have to decide whether certain sections of the MTA are constitutional, it is clear that federal law would supersede any state constitutional protection in this case. The FCC is working to ensure that all new

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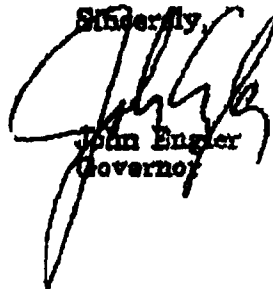
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The Honorable William M. Oakley
Page Two
August 19, 1996

entrants in the telecommunications arena have a level playing field when entering the market. Our state law provides for such protection and I would prefer that we control rules and regulations on this point. However, I cannot support those municipalities who would like to get out from both state and federal guidelines in this instance.

Sincerely,



John Engler
Governor

JE:rlf

cc: Chairman Strand
Commissioner Svanda
Commissioner Shea

01-13-97 03:11PM FROM MICH. BELL LAW DEPT. TO 913127017711

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May 28, 1996

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P. O. Box 30221
Lansing, MI 48909

Re: *FOIA Request for Ameritech Michigan's Notices of Transfers Required
By Section 308 of the Michigan Telecommunications Act*

Dear Ms. Wideman:

Pursuant to the Michigan Freedom of Information Act, MCL §15.231, *et seq.*, we hereby request copies of any and all notices of Ameritech Michigan to the Michigan Public Service Commission regarding Ameritech Michigan's transfer(s), in whole or in part, of substantial assets, functions or employees associated with basic local exchange service to an affiliated entity. Ameritech Michigan is required to file these notices pursuant to Section 308 of the Michigan Telecommunications Act, 1991 PA 179, as amended, being MCL 484.2308.

This request covers documents in your possession as well as any other documents which may be in the possession of or available to any other departmental personnel. As used in this letter, the term "documents" includes all originals and any non-identical copies of records of any kind, whether formal or informal, including letters, notes, diagrams, maps, photographs, charts, video tapes, audio tapes, graphs, files, calendars, summaries, computer printouts, cards, floppy disks and any other information-bearing media which can be processed, translated or transcribed into reasonably useable form.

May 28, 1996

Page 2

In accordance with § 5(1) of the Freedom of Information Act, copies of the above-described records should be provided to the undersigned not more than five business days after the date upon which this request is delivered. If you have any questions regarding the scope of this request, please contact me at your convenience. Thank you for your cooperation.

Very truly yours,

FRASER TREBILCOCK DAVIS & FOSTER, P.C.

A handwritten signature in black ink, appearing to read "Michael S. Ashton", written over a horizontal line.

Michael S. Ashton

MSA/csp



State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Public Service Commission

6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909-7721
517-334-6445

Commissioners

John G. Strand
John C. Shea
David A. Svanda

June 7, 1996

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Foster
1000 Michigan National Tower
Lansing, MI 48933

Dear Mr. Ashton:

Re: Freedom of Information Act Request Concerning PA 179 As Amended

This letter is in response to your recent request, pursuant to the Michigan Freedom of Information Act, for copies of any and all notices of Ameritech Michigan to the Michigan Public Service Commission regarding Ameritech Michigan's transfer(s), in whole or in part, of substantial assets, functions or employees associated with basic local exchange service to an affiliated entity.

Enclosed are copies of four documents located in searches of our files:

- Letter dated August 5, 1993 from Ameritech announcing the roll-out of its business units.
- Letter dated March 16, 1994 from Ameritech on upcoming transfer of employees.
- Application of Michigan Bell Telephone Company for a disclaimer of jurisdiction or for authority to transfer records outside the State of Michigan, filed in Case No. U-10749 on December 13, 1994.
- Commission order in Case No. U-10749, on April 27, 1995, approving transfer of records.

Sincerely,

Dorothy Wideman
Executive Secretary

enclosures

c: W. Celio

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to determine the total service long run) Case No. U-11103
incremental costs and imputation requirements)
under the Michigan Telecommunications Act.)

AFFIDAVIT OF CHRISTOPHER T. HORAK

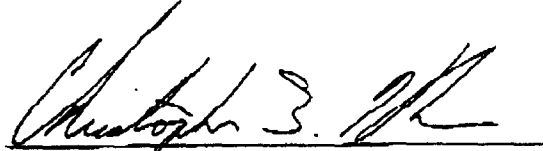
STATE OF MICHIGAN)
) ss:
COUNTY OF INGHAM)

I Christopher T. Horak, having been duly sworn, state as follows:

1. I am the Public Affairs Director for the Michigan Cable Telecommunications Association.
2. I am familiar with the construction of lines necessary to provide cable television service.
3. On July 20, 1995, in Plymouth Township, I observed individuals working near Ameritech trucks wearing Ameritech logos on their clothing installing both strand and coaxial cable which are necessary to provide cable television service.
4. In speaking with these individuals, they advised me that they were working for Ameritech and that they were installing cable to provide cable television service.

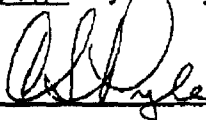
5. Attached are photographs which accurately depict some of the individuals and their activities in Plymouth Township on July 20, 1995.

Further, the deponent sayth nor.



Christopher T. Horak
Public Affairs Director, Michigan
Cable Telecommunications Association

Subscribed and sworn to before me
this 9th day of July, 1996.



Notary Public

County, Michigan

My Commission expires:

CSPYLE
NOTARY PUBLIC STATE OF MICHIGAN
INGHAM COUNTY
MY COMMISSION EXP. FEB. 26, 2000

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